



Memorandum

TO: HONORABLE MAYOR
CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Proposed Gift Ordinance

DATE: September 30, 2004

Attached is a copy of the Proposed Gift Ordinance, which is set for the City Council October 5th, 2004, Agenda, Item 3.7.

On September 23, 2004, the Mayor's Blue Ribbon Task Force approved forwarding the proposed Ordinance to the City Council for discussion and approval. The Ordinance makes the following revisions to the current Gift Ordinance.

A. Political Reform Act Requirements (SJMC § 12.08.015)

The Ordinance clarifies that the reporting and disclosure of gifts must be done in accordance with the requirements of the Political Reform Act (Calif. Gov. Code Section 81000 *et seq.*, as amended). The amendment provides that the gift limitations and disqualification requirements under state law are applicable to gifts which are not prohibited by the Ordinance.

B. Gifts which are not prohibited (SJMC § 12.08.030)

1. Gifts Less Than \$50

The proposed amendment provides that gifts with a value of less than \$50 including meals and beverages in a business and social setting are not prohibited. The current Gift Ordinance provides an exception for gifts with a value of less than \$15 and provides for a separate exception for meals and beverages.

2. Admission by Sponsor of an Event

This amendment clarifies the current exception for admission to ceremonial, political, civic, cultural or community functions provided by the sponsor of the event for the personal use of the officer or employee. The amendment provides that cultural events include admission to theatrical productions, art exhibits, political fundraisers but not regularly scheduled athletic events such as professional sporting events. The sponsor does not include individuals or organizations whose sponsorship of an event is solely limited to funding or monetary support.

3. Changes Consisted with State Law

The proposed Ordinance makes clarifying changes to the gift provisions to be more consistent with state law. For example, "honoraria" have been deleted as an exception to prohibited gifts and "wedding gifts" have been added as an exception in accordance with the Political Reform Act.

C. City Charter Requirement

Section 607 of the City Charter provides that no changes shall be adopted which in any way lessen the ethical standard in regulations except by two-thirds vote of the City Council. Because of the proposed change to \$50 from \$15 for an exception to prohibited gifts, a two-thirds vote is necessary for approval of this amendment.



Richard Doyle
City Attorney

Attachment

Cc: Del Borgsdorf
Lee Price

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
CHAPTER 12.08 OF TITLE 12 OF THE SAN JOSE
MUNICIPAL CODE TO REVISE THE CITY OF SAN JOSE
GIFT ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 12.08 of Title 12 of the San José Municipal Code is amended to be
numbered, entitled and to read as follows:

CHAPTER 12.08
PROHIBITION OF GIFTS

12.08.010 Gifts Prohibited

- A. No officer or designated employee of the City or its Redevelopment Agency shall accept any gift, directly or indirectly, from any person who is subject to the decision-making or recommending authority of such officer or employee, except as specifically provided in this Chapter.
- B. "Person subject to the decision-making or recommending authority" means any individual, firm or entity whose interest or whose employer's or client's interest:
 - 1. Has been materially affected by the work of such officer or employee within the two (2) years prior to the time the gift is given; or
 - 2. In the future could reasonably be foreseen to be materially affected by the work of such officer or employee.

12.08.015 Political Reform Act Requirements

- A. The reporting and disclosure of gifts shall be done in accordance with the requirements of the Political Reform Act (California Government Code Section 81000 *et seq.*, as amended) and the requirements in this Chapter.
- B. The gift limitations and disqualification requirements under the Political Reform Act are applicable to gifts which are not prohibited by this Chapter.

12.08.020 Gift Defined

"Gift" means a voluntary transfer of any thing, service, payment or value to the extent that legal consideration of equal or greater value is not received.

- A. As used in this Chapter, the term "gift" includes:
1. Any rebate or discount in the price of any thing of value unless the rebate or discount is made in the regular course of business to members of the public.
~~without regard to official status, or unless the rebate or discount is made available to all officers and employees of the city and redevelopment agency on an equal basis.~~
 2. An officer's or employee's community property interest, if any, in a gift received by that individual's spouse.
 3. The provision of travel, including transportation, accommodations and food, except as expressly permitted pursuant to Section 12.08.030.
- B. As used in this Chapter, the term "gift" does not include:

1. Campaign contributions which otherwise comply with Title 12 of the San José Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended.
2. Any devise or inheritance.

12.08.030 Gifts Not Prohibited

This Chapter does not prohibit those gifts which strictly fall within the exceptions enumerated herein:

- A. Gifts with a value less than fifteen-fifty dollars (\$50): ~~Token gifts~~ Gifts, including meals and beverages provided to an officer or employee in a business or social setting, ~~which that~~ have a value of ~~no more~~ less than fifteen-fifty dollars (\$50), as long as the total value of all such ~~token gifts~~ received from any one donor ~~de~~ does not exceed fifteen-fifty dollars (\$50) or more in any calendar year.
- B. Informational material: Informational material such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such expenses. Informational material does not include provision of educational trips including transportation, accommodation and food.
- C. Hospitality: Gifts of hospitality involving food, beverages or occasional lodging provided to any officer or designated employee by an individual in such individual's primary residence.
- D. Reciprocal gifts: Gifts-Presents exchanged between any officer or designated employee and an individual, other than a ~~local governmental lobbyist~~ lobbyist as defined in Chapter 12.12, on holidays, birthdays, baby showers, or similar occasions. ~~This exception shall not apply to the extent that the gift received by~~

~~the officer or designated employee exceeds in value gifts that he or she has given to the donor. provided that the presents exchanged are not substantially disproportionate in value.~~

~~E. — Meals and beverages: Meals and beverages provided to an officer or employee in a business or social setting.~~

~~F. — Honoraria and awards: Honoraria and awards. As used in this chapter, "honorarium" means a payment or gift for speaking at an event, participating in a panel or seminar, or engaging in any similar activity.~~

~~E.G. Panels and seminars: Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event.~~

~~F.H. Admission given by sponsor of an event: Admission to ceremonial, political, civic, cultural or community functions provided by a sponsor of the event for the personal use of the officer or employee. For example, cultural events include admission to theatrical productions and art exhibits; pPolitical events include political fundraisers.~~

- ~~1. Admission to regularly scheduled athletic events, such as tickets to professional sporting events, are not included as an exception to prohibited gifts.~~
- ~~2. A sponsor of an event shall not include individuals, persons or organizations whose sponsorship of the event is solely limited to funding or monetary support such as the purchase of tickets.~~

~~I.G. Employment interview - government employer: Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental~~

agency in connection with an employment interview, when the interview is conducted at least one hundred fifty (150) miles from San José and where the situs of the employment will be at least the same distance from the City.

HJ. Employment interview - private employer: Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bonafide prospect of employment, when the expenses are advanced or reimbursed to an officer or designated employee by a potential employer, provided that the officer or designated employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve (12) months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.

IK. Authorized travel: Transportation, accommodation, food and directly related expenses for any officer or designated employee which has been authorized by a majority of the City Council or Redevelopment Agency Board or which is pursuant to a written City or Redevelopment Agency policy for intrastate or interstate travel regardless of the source of payment.

JL. City or Redevelopment Agency business: Transportation provided to an officer or designated employee by a contractor or other person doing business with the City or Redevelopment Agency, provided that such transportation is related to City or Redevelopment Agency business which is within the scope of employment or the duties of such officer or designated employee, and further provided that such transportation is not in excess of one hundred twenty-five (125) miles one way. Nothing in this subsection shall be interpreted to limit the City Council's or Redevelopment Agency Board's discretion to approve travel under subsection KI. above.

- KM. Flowers: Flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.
- LN. Prizes and Awards from Bona Fide Competitions: ~~A prize awarded on the basis of chance, provided that there are at least one thousand participants eligible to win the prize, a majority of whom are not public officials or government employees.~~ A prize or award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a City or Redevelopment Agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirements under the Political Reform Act of 1974 as amended.
- M. Wedding gifts: Wedding gifts from an individual other than a lobbyist as defined in Chapter 12.12.

12.08.040 Acceptance Of Gifts

A gift shall be deemed to have been accepted except where:

- A. It is not used, and, within thirty (30) days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.
- B. It is treated as and remains the property of the City or the Redevelopment Agency.
- C. It is received by an officer or designated employee in his or her official capacity or as a representative of the City or Redevelopment Agency, is reported to the City Council or Agency Board, and the Council or Board approves the retention.

12.08.050 Reporting Gifts To Spouse And Children

- A. At the time of filing the annual disclosure statement required by the Political Reform Act or any applicable conflict-of-interest code, each City and Redevelopment Agency officer and designated employee shall file a family gift report on a form to be provided by the City Clerk.
- B. The officer or designated employee shall indicate on such report any gifts known to have been accepted during the relevant reporting period by such officer's or employee's spouse and any dependent child where such gifts would have been prohibited to the officer or employee. The value of any such gift and the donor must be disclosed. If the officer or employee has no knowledge of any such gift having been received, the report shall so state.

PASSED FOR PUBLICATION of title this _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk